

## **Chapter 78C.**

### **Investment Advisers.**

#### **Article 1.**

##### **Title and Definitions.**

#### **§ 78C-1. Title.**

This Chapter shall be known and may be cited as the North Carolina Investment Advisers Act. (1987 (Reg. Sess., 1988), c. 1098, s. 1.)

#### **§ 78C-2. Definitions.**

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

- (1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:
  - a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.
  - b. A bank, savings institution, or trust company.
  - c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession.
  - d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them.
  - e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.
  - f. A person solely by virtue of such person's services to or on behalf of any "business development company" as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an "investment company" by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988.
  - g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary

trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter.

- h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold.
  - i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business.
  - j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities.
  - k. Any person excepted from the definition of investment adviser under the Investment Advisers Act of 1940 or any rule or regulation promulgated under that act.
  - l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment.
  - ll. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.
  - m. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.
- (2) "Investment Advisers Act of 1940" means the federal statute of that name as amended before or after the effective date of this Chapter.
- (3) "Investment adviser representative" means, with respect to any investment adviser registered under this Chapter, any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
- a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,
  - b. Manages accounts or portfolios of clients,
  - c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3) a., b., d., or e., then only the direct supervisors of such persons are deemed to be investment adviser representatives under G.S. 78C-2(3) c.,
  - d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an

investment adviser representative except for the performance of the activities described in G.S. 78C-2(3) d., or

- e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3) a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3) c.), or d. in the performance of the foregoing activities.

Notwithstanding this subdivision, the term "investment adviser representative" as used in this Chapter and as applied to a person who is employed by, or associated with, an investment adviser covered under federal law only includes an individual who (i) has a "place of business" in the State, as that term is defined in rules or regulations adopted or promulgated under section 203A of the Investment Advisers Act of 1940 by the United States Securities and Exchange Commission and (ii) either:

- a. Is an "investment adviser representative" as that term is defined in rules or regulations adopted or promulgated under section 203A of the Investment Advisers Act of 1940 by the United States Securities and Exchange Commission; or
  - b. Is not a "supervised person" as that term is defined in rules or regulations adopted or promulgated under the Investment Advisers Act of 1940 by the United States Securities and Exchange Commission and who solicits, offers, or negotiates for the sale of, or who sells, investment advisory services on behalf of an adviser covered under federal law.
- (4) "Investment adviser covered under federal law" means any adviser who is registered with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3).
  - (5) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government. (1987 (Reg. Sess., 1988), c. 1098, s. 1; 1989, c. 770, s. 12(a)-(c); 1997-419, s. 14; 1997-462, s. 6; 2001-273, s. 1; 2003-413, s. 16; 2013-91, s. 3(f).)

**§§ 78C-3 through 78C-7: Reserved for future codification purposes.**